

Atty. Docket No.: 59728.010600
Serial No. 10/051,382
Response to Final Office Action dated February 18,2004

REMARKS

Claims 1-3, 5-8, and 27-34 are pending in this application. Claims 9-26 are withdrawn. Claim 4 has been canceled. Upon entry of this Amendment, claims 1, 30, 31, and 33 have been amended and claims 35-38 have been withdrawn. No new matter has been added.

Restriction Requirement:

In view of the Examiner's earlier restriction requirement, claims 9-26 and 35-38 have been withdrawn. Applicants retain the right to present claims 9-26 and 35-38 in a divisional application.

Objection to the Specification:

In the Office Action Summary, the Examiner marked an objection to the Specification of the present application but no objection to the specification was made. Applicants assume that this was a typographic error.

Objection to claims 1, 30, 31, and 33:

The Examiner has objected to claims 1, 30, and 33 because of informalities. Specifically, the Examiner objected to the term "said pesticide" in claims 1, 30, and 33 and indicated that the term should be changed to "said pesticide and attractant." In particular, the Examiner suggests that the term "attractant" in claim 31 should be "pesticide." Accordingly, Applicants have amended claims 1, 30, 31, and 33 as suggested by the Examiner. It is believed that the objection to claims 1, 30, 31, and 33 has been overcome and should be withdrawn.

Rejection under 35 U.S.C. §103(a):

The Examiner has rejected claims 1-3, 5-8, 27, 28, and 30-32 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,306,913 B1 to Hayes et al. (Hayes '913) in view of U.S. Patent Application No. 2001/0054367 A1 to Pearce, III et al. (Pearce). Applicants respectfully traverse the rejection for the following reasons.

Claim 1 is rejected as being unpatentable over Hayes in view of Pearce. Claim 1 recites in part “a flexible material formed to create a spherical vessel wherein said spherical vessel has a diameter greater than 0.68 inches.” The specification of the present application further states that “the capsule loaded therein differs from standard paintball calibers so as to prevent use of the capsules of the invention with standard paintball guns... A 0.73 inch caliber size is preferable, although any diameter larger than 0.68 is desirable as such a size exceeds the capacity of conventional paintball guns.” Para. [0041].

In the Office Action, the Examiner states that “Hayes does not specifically disclose a spherical vessel having a diameter greater than 0.68 inches.” Because neither Hayes nor Pearce teach or suggest a diameter greater than 0.68 inches, the references do not properly meet the *prima facie* case of obviousness. Neither the references nor the knowledge available to one of ordinary skill in the art, alone or in combination, teach or suggest this limitation. In fact, Hayes teaches away from using a spherical vessel wherein said spherical vessel has a diameter greater than 0.68 inches. “A paint ball containing the pesticide, instead of paint, would be formulated to contain a specific amount of the pesticide. The paint ball would be applied to the site by loading it in a paint ball gun, aiming it at the target and shooting.” Col. 7, lines 31-35. Hayes therefore teaches that a paint ball is filled with pesticide rather than paint and loaded in a paint ball gun. Claim 1 of the present application recites a spherical vessel that “differs from standard paintball calibers so as to prevent use of the capsules of the invention with standard paintball guns.” Para. [0041].

Pearce also teaches away from the present application. Pearce teaches that “[p]rojectiles 10 as disclosed herein are most preferably made with a length of about 0.67 inches and a diameter of about 0.38 inches.... more spherical projectiles having a lower ratio can be more prone to veering off in one direction from the aiming point during flight.” Para. [0039]. First, claim 1 recites a diameter greater than 0.68 inches. Pearce teaches a projectile of with a length of about 0.67 and a diameter of about 0.38 inches. The present invention recites a greater length and a significantly greater diameter of greater than 0.68 inches. Secondly, the present application recites a “spherical vessel.” Pearce teaches against using a

spherical vessel to prevent “veering off.” Accordingly, neither Hayes nor Pearce teach or suggest the elements of claim 1.

Since the limitations of claim 1 are necessarily incorporated into claims dependent therefrom, claims 2, 3, 5, and 27-29 are allowable for the reasons stated herein with respect to claim 1.

Claim 7 of the present application recites in part “a first cylindrical chamber, with a diameter greater than 0.68 inches ... and, a second cylindrical chamber, of a diameter greater than 0.68 inches.” As discussed above with regards to claim 1, the size of the caliber is not considered obvious in view of Hayes and Pearce.

Since the limitations of claim 7 are necessarily incorporated into claims dependent therefrom, claim 8 is allowable for the reasons stated herein with respect to claim 7.

Claim 30 is rejected as being unpatentable over Hayes in view of Pearce. Claim 30 as amended recites in part “the treatment of insects in the genus of Anastrepha or Ceratitis.” Exemplary support is found in paras. [0005] and [0006] of the originally filed specification. Hayes discloses a treatment for scolytids. In the discussion of claim 28, the Examiner states that “Hayes further discloses screening compounds and Drosophila (fruit flies) repelling as prior art.” However, Hayes does not disclose using the Hayes container and pesticide for treatment of Anastrepha or Ceratitis. Drosophila is not analogous to Anastrepha or Ceratitis. Hayes even discloses that insects pesticides are not analogous. Hayes states “[i]t is therefore not possible to predict on the basis of structure which compounds will make good repellents.” Col. 6, lines 42-43. Likewise, Pearce also does not disclose a treatment for the genus of Anastrepha or Ceratitis. Therefore, neither Hayes nor Pearce, alone or in combination, teach or suggest “the treatment of insects in the genus of Anastrepha or Ceratitis.”

Since the limitations of claim 30 are necessarily incorporated into claims dependent therefrom, claims 31 and 32 are allowable for the reasons stated herein with respect to claim 30.

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Claims 29, 33 and 34 are rejected under 35 U.S.C § 103(a) as being unpatentable over Hayes in view of Pearce as applied to claim 1 above, and further in view of MacDonald (U.S. Patent No. 5,174,807). This rejection is respectfully traversed. Claim 33 has been further amended to recite a “spherical vessel with a diameter greater than 0.68 inches.” As discussed above with respect to claims 1 and 7, neither Hayes, Pearce, nor MacDonald teach or suggest a spherical vessel with a diameter greater than 0.68 inches.

Since the limitations of claim 33 are necessarily incorporated into claims dependent therefrom, claim 34 is allowable for the reasons stated herein with respect to claim 33.

Therefore, neither Hayes, Pearce, nor MacDonald, alone or in combination, teach or suggest the limitations of the claims of the present application. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejections of claims 1-3, 5-8, and 27-34 under 35 U.S.C. § 103(a).

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CONCLUSION

Applicants respectfully submit that all of the sated grounds of rejections and objections have been properly traversed, accommodated or rendered moot. Thus, Applicants believe that the present application is in condition for allowance, and as such, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections and objections, and allowance of this application.

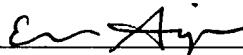
Should the Examiner determine that any further action is necessary to place this application into better form for allowance, the Examiner is encouraged to telephone the undersigned representative at the number listed below.

AUTHORIZATION

No further fees are believed due by this paper. However, if there are any fees due, the Commissioner is authorized to charge the fees or any additional fees, or credit overpayment to our Deposit Account No. 50-0653, Order No. 59728.010600.

Respectfully submitted,

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